SUPREME COURT OF THE UNITED STATES.

October Term, 1909.

No. 1[illegible]

THE STATE OF MINNESOTA,
Appellant,

v.

C. N. BRUNDAGE.

BRIEF ON BEHALF OF APPELLANT.

W. B. DOUGLAS,
Attorney General,
Attorney for Appellant.

Pioneer Printing Co., St. Paul, Minn.

18809

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1900.

NO. 159.

THE STATE OF MINNESOTA, Appellant,

vs.

C. N. BRUNDAGE, Respondent.

BRIEF OF APPELLANT.

STATEMENT OF FACTS.

In July, 1899, the defendant C. N. Brundage was convicted by the municipal court of the City of Minneapolis, Minnesota, of the crime of offering oleomargarine for sale, in violation of the latter portion of section 16 of chapter 295 of the Laws of Minnesota for 1899. The complaint upon which the defendant was convicted reads as follows:

"William C. Corbett, being duly sworn, makes complaint to the above-named court, and says, that, on the twenty-second day of May, A. D. 1899, at the city of Minneapolis, in said county of Hennepin, State of Minnesota, C. N. Brundage, then and there being, did willfully, unlawfully and wrongfully

offer and expose for sale, and have in his possession with intent to sell, a quantity of a certain compound designed to take the place of butter, and made in part from animal and vegetable oils and fats not produced from milk or cream, said compound being an article commonly known as oleomargarine, and being then and there colored with a coloring matter whereby the said article and compound was made to resemble butter, contrary to the statutes in such case made and provided, and against the peace and dignity of the State of Minnesota.

"Wherefore complainant prays that said offender may be arrested and dealt with according to law."

The court adjudged that he pay a fine of twenty-five dollars, and in default thereof be committed to and confined for a period of thirty days in the common jail of Hennepin county, and being so committed upon failure to pay the fine imposed, the defendant sued out a writ of *habeas corpus* in the United States Circuit Court, Eighth Judicial Circuit, District of Minnesota, returnable before the Hon. William Lochren, Judge.

It is conceded that all proceedings had in the municipal court of the city of Minneapolis were regular, but the defendant in his petition for a writ of *habeas corpus* asserted that such imprisonment was unauthorized and illegal, because said act of the legislature of the State of Minnesota was in violation of:

1. Section 8 of Article 1 of the Constitution of the United States providing that "Congress shall

have power to regulate commerce among the several states."

2. Section 2 of Article 4 of the Constitution of the United States, which provides that "citizens of each state shall be entitled to all the privileges and immunities of the citizens in the several states."

3. Section 1 of Article 14 of the Constitution of the United States, providing that "no state shall deprive any person of life, liberty or property without due process of law, or deny to any person within its jurisdiction equal protection of the laws."

The court, upon hearing before Hon. William Lochren, Judge, on Sept. 21, 1899 (96 Federal Reporter 963), determined that portion of section 16 of chapter 295 of the Laws of 1899, under which the charge in question was predicated, to be void, upon the ground that the same was in violation of the commerce clause of the Constitution, and discharged the defendant, from which decision the State of Minnesota appeals to this Court.

The transcript of the evidence upon which the defendant was tried in the municipal court of the city of Minneapolis was attached to his petition, as well as identified in the return of the officer, and was before the Court upon the hearing now under review. (Record, fols. 7 to 57.)

It appeared that on the twenty-second day of May, 1899, the defendant not only had in his possession with intent to sell, but did expose for sale and actually sell, in the city of Minneapolis, one package containing ten pounds of oleomargarine, put up in

one-pound prints, stamped with a design of wheat sheaf, gold and yellow in color, resembling creamery butter. (Record, fols. 8 and 10.) Each print was wrapped up in tissue paper, and not marked in any manner to indicate that it was oleomargarine, although the larger package was so marked. (Fols. 8 and 10.)

Evidence was offered tending to show that which is a matter of common knowledge, and will be taken judicial notice of, namely, that in winter, under adverse conditions, butter is frequently lighter in color than in its normal condition, which is a deep yellow, often referred to in the testimony as the "standard color." It is not disputed that the mixture of oils, fats and salt known as oleomargarine is much lighter in color than high class butter, and from a mechanical analysis of the oleomargarine in question it appeared that butter color or butter yellow was used to color the same to give it the appearance of ordinary butter. (Evidence of Mr. Hummel, chemist, Record, fol. 18.)

It also appeared from the evidence that the defendant, Mr. Brundage, was the agent of the Hammond Packing Company, a corporation; that such company purchased the ten-pound package of oleomargarine in question from the G. H. Hammond Company at Hammond, Indiana; that it was never opened for any purpose, until offered for sale, and then for the purpose of inspection, after being shipped from Indiana, and that Mr. Brundage sold it as the agent of the Hammond Packing Company.

William B. Russell, foreman of the butterine department of the G. H. Hammond Company, called as a witness on behalf of the defendant, testified that butter color was put into the mixture known as oleomargarine "to color the mixture yellow," and that without it oleomargarine would be a very light straw color. (Record, fol. 42.)

ASSIGNMENTS OF ERROR.

1. The court erred in holding that a portion of chapter 295 of the laws of the State of Minnesota for the year 1899 is in violation of the Constitution of the United States, and particularly in holding that part of section 16 of said chapter which prohibits any person from "offering or exposing for sale, or selling any butterine or oleomargarine or any mixture or compound of the same or any article or compound made wholly or in part from animal or vegetable oils or fats not produced from milk or cream," which in the manufacture had been "colored with annato or any other coloring matter whatever, whereby the said article or compound was made to resemble butter," to be in violation of Article 1, Section 8 thereof, providing that Congress shall have power to regulate commerce among the several states.

2. The court erred in discharging the defendant from custody upon the ground that said act of the Legislature was not a valid exercise of the police power and also that the same is in violation of the Constitution of the United States.

ARGUMENT.

Section 16 of chapter 295 of the Laws of 1899, upon which the complaint against the defendant was predicated, reads as follows:

> "Sec. 16. No person by himself or his agents or servants shall manufacture for sale, have in his possession with intent to sell, expose or offer for sale, or sell as butter or as cheese, or as substitutes for butter or cheese, or as imitations of butter or cheese, under any name or title whatsoever, any mixture or compound, which is designed to take the place of butter or of cheese, and which is made from animal or vegetable oils or fats, or by the mixing or compounding of the same, or any mixture or compound consisting in part of butter or of cheese in mixture or combination with animal or vegetable oils or fats, nor shall any person mix, compound with or add to milk, cream, butter or cheese any animal or vegetable oils or fats, with design or intent to make or produce any article or substance in imitation of butter or cheese; *nor shall any person coat, powder or color with annatto or with any other coloring matter whatever, butterine or oleomargarine or any mixture or compound of the same, or any article or compound made wholly or in part from animal or vegetable oils or fats not produced from milk or cream whereby the said article or compound shall be made to resemble butter or cheese, nor shall any person offer or expose for sale or sell any article, substance or compound made, manufactured or produced in violation of the provisions of this section, whether such article, substance or compound shall have been made, manufactured or produced within this state or in any other state or country;* * * *"

I.

Only that part of section 16 of chapter 295 of the laws of 1899 above italicized was assailed in the lower court and is now before this Court for review.

Section 16 can be fairly subdivided into two parts. In the first subdivision the legislature saw fit to prohibit not only the manufacture in Minnesota, but also the sale *as butter* within the state, of any substitute for butter manufactured therein from any article other than milk or cream. In the other portion, which for convenience I have above italicized, the legislature prohibited the coloring with annato or any other coloring matter whatever any butterine, oleomargarine or any mixture or compound made wholly or in part from any animal or vegetable oils or fats not produced from milk or cream, whereby said article or compound shall be made to resemble butter, and prohibited the sale or offering for sale of any such compound, whether the same "shall have been made, manufactured or produced within this state or in any other state or country." The defendant was charged with a violation of this portion of section 16 and duly convicted therefor.

Many questions likely to arise under the first portion of the section were not before the court either upon the original trial or in the *habeas corpus* case now presented upon appeal.

Under far more drastic statutes it can be safely asserted the question is settled in this Court that

the legislatures of various states have power to absolutely prohibit the manufacture and sale of any substitute for butter which is made from animal or vegetable oils or fats other than those produced from milk or cream, where the police power was invoked and applied to such articles or compounds not only manufactured but always remaining within the state.

Powell vs. Pennsylvania, 127 U. S. 678.

Schollenberger vs. Pennsylvania, 171 U. S. 16.

In the *Powell* case the Pennsylvania statute was upheld which prohibited the sale of oleomargarine, as applied to a case where this article was not only manufactured, but always remained within the state. Under the rule here established, that portion not italicized of section 16 of the act under consideration, *must be deemed valid as applied to such articles manufactured and always remaining in Minnesota.*

This portion of the statute has never been invoked as against the sale of oleomargarine or any like compound designed in a general way to resemble butter manufactured in other states and sold by the importer in original packages; while the other clause prohibiting the sale of like compounds not made from milk or cream, but colored so as to resemble butter, was designed to prohibit the sale thereof in Minnesota, regardless of the fact that it was manufactured elsewhere.

The subdivisions of the act are severable and bear no special relation to each other. While it is in-

sisted the Minnesota act as an entirety is valid as applied to the mass of property always within the state, on the other hand statutes which are constitutional in part only will be upheld and enforced so far as they are not in conflict with the constitution, provided the prohibited parts are severable. See:

Packet Co. vs. Keokuk, 95 U. S. 80.

Bresser vs. Illinois, 116 U. S. 252.

Durca vs. Mayor, 96 N. Y. 477.

Baldwin vs. Franks, 120 U. S. 689.

State vs. Bockstruck, 136 Mo. 336.

Wis., Minn. & Pac. R. R. Co. vs. Jacobson, 21 Supt. Ct. Rep. 115.

In *Baldwin vs. Franks, supra,* at page 689, the Court, after an exhaustive review of the question, say:

> "This evidently brought that case within the rule which controls the determination of this class of questions, that the constitutional part of a statute may be enforced and the unconstitutional part rejected, 'where the parts are so distinctly separable that each can stand alone, and where the court is able to see and to declare that the intention of the legislature was that the part pronounced valid should be enforceable, even though the other part should fail.' *Virginia Coupon Cases*, 114 U. S. at p. 305. As was said in *Louisiana vs. Allen*, 103 U. S. 80, 84: 'The point to be determined in all such cases is whether the unconstitutional provisions are so connected with the general scope of the law as to make it impossible, if they are stricken out, to give effect to what appears to have been the intent of the legislature.'"

In *Packet Company vs. Keokuk, supra*, the Court, referring to portions of an invalid ordinance, at page 89 say:

> "It may be conceded that the ordinance is too broad and that some portions of its provisions are unwarranted. When those provisions are attempted to be enforced a different question may be presented."

II.

Does the closing paragraph of section 16 of chapter 295 of the laws of 1899 violate Article 1, Section 8 of the Federal Constitution, which confers upon Congress the exclusive power to regulate commerce between States?

The issue is limited to the single question: Has the legislature of Minnesota power to prohibit the sale of any compound manufactured elsewhere, which is designed to take the place of butter, provided it is not produced from milk or cream and is so colored as to resemble the highest class of the pure article? The discussion both by court and counsel in the court below was directed to the effect of the commerce clause of the Federal Constitution upon that portion of the Minnesota act offended against by the defendant. The power of the legislatures of the various states invoked in various enactments regulating or attempting to regulate the sale of oleomargarine and like substances, has recently been considered so exhaustively in this court that I shall not trespass by presenting a full analy-

sis of the principles involved, but shall barely attempt to assist the court by marshaling a few citations from the recently decided cases.

The Minnesota act upon which a complaint against the defendant was predicated reads:

> "Nor shall any person coat, powder, or color with annatto or with any other coloring matter whatever, butterine or oleomargarine or any mixture or compound of the same, or any article or compound made wholly or in part from animal or vegetable oils or fats not produced from milk or cream, whereby the said article or compound shall be made to resemble butter or cheese, nor shall any person offer or expose for sale or sell any article, substance or compound made, manufactured or produced in violation of the provisions of this section, whether such article, substance or compound shall have been made, manufactured or produced within this state or in any other state or country. * * *"

Defendant was charged and convicted in a court of competent jurisdiction of the crime of having willfully, unlawfully and wrongfully offered and exposed for sale with intent to sell, "*a quantity of a certain compound designed to take the place of butter and made in part from animal and vegetable oils or fats not produced from milk or cream, said compound being an article commonly known as oleomargarine and being then and there colored with a coloring matter whereby the said article or compound was made to resemble butter, contrary to the statutes in such case made and provided,*" etc.

Upon the trial of the original case it appeared the compound, not made from milk or cream, known as oleomargarine, which was exposed for sale and sold by the defendant, was colored to resemble yellow butter with a coloring matter known as butter yellow; also that the same was put up in a ten pound package, marked oleomargarine, which contained ten unmarked prints of the article, each weighing one pound. From the final judgment of the court discharging the defendant in habeas corpus proceedings, the State appealed.

In *Plumley vs. Massachusetts*, 155 U. S. 461, this Court had under consideration an act of the legislature of Massachusetts practically identical in terms with the Minnesota provision. Section one thereof reads:

> "Section 1. No person by himself or his agents or servants shall render or manufacture, sell, offer for sale, expose for sale or have in his possession with intent to sell, any article, product or compound made wholly or partly out of any fat, oil or oleaginous substance or compound thereof, not produced from unadulterated milk or cream from the same, which shall be in imitation of yellow butter produced from pure unadulterated milk or cream of the same; provided, that nothing in this act shall be construed to prohibit the manufacture or sale of oleomargarine in a separate and distinct form, and in such manner as will advise the consumer of its real character, free from coloration or ingredient that causes it to look like butter."

The only distinction between the statutes of Minnesota and Massachusetts (which it is submitted is not of substance) is that the Massachusetts act prohibits the sale of oleomargarine so colored as to imitate yellow butter, while the Minnesota act omits the word "yellow" from the prohibition. In *Plumley vs. Massachusetts,* this court, after an exhaustive examination of the authorities, affirmed the decision of the Supreme Court of Massachusetts, and decided that the act in question was but a reasonable exercise of the police power of the State, and was not in violation of the commerce clause of the Federal Constitution. That case presented a sale in Massachusetts, in the original package, of oleomargarine imported by the vendor from a sister State. The authority of this decision has never been shaken. In fact it was directly affirmed in the last case presented to this court, and decisions in harmony therewith, which still stand unchallenged, preceded it in various states. See

Schollenberger vs. Pennsylvania, 171 U. S. at page 17;
McAllister vs. Maryland, 72 Md. 391;
State vs. Newton, 50 Vroom. (N. J.) 535;
State vs. Bockstruck, 136 Mo. 335.

We submit the theory upon which the police power of the State is invoked is that the public is interested in being protected from any imposition likely to mislead, cheat or deceive those desiring to purchase or use butter, and that the artificial color-

ing of this compound with butter yellow so as to closely imitate the highest quality of pure butter can be but for the single purpose of deceiving.

In *Plumley vs. Massachusetts, supra*, Mr. Justice Harlan, speaking for the Court, said:

> "It has therefore been adjudged that the states may legislate to prevent the spread of crime, and may exclude from their limits paupers, convicts, persons likely to become a public charge, and persons afflicted with contagious or infectious diseases. These and other like things having immediate connection with the health, morals, and safety of the people, may be done by the states in the exercise of the right of self-defense. And yet it is supposed that the owners of a compound which has been put in a condition to cheat the public into believing that it is a particular article of food in daily use and eagerly sought by people in every condition of life, are protected by the Constitution in making a sale of it against the will of the State in which it is offered for sale, because of the circumstance that it is an original package, and has become a subject of ordinary traffic. We are unwilling to accept this view. We are of opinion that it is within the power of a State to exclude from its markets any compound manufactured in another State, which has been artificially colored or adulterated so as to cause it to look like an article of food in general use, and the sale of which may, by reason of such coloration or adulteration, cheat the general public into purchasing that which they may not intend to buy. The Constitution of the United States does not secure to any one the privilege of defrauding the public. The deception against which the statute of Massachusetts is aimed is an offense against society; and the States are as competent to protect their people against

such offenses or wrongs as they are to protect them against crimes or wrongs of more serious character. And this protection may be given without violating any right secured by the national Constitution, and without infringing the authority of the general government. A State enactment forbidding the sale of deceitful imitations of articles of food in general use among the people does not abridge any privilege secured to citizens of the United States, nor, in any just sense, interfere with the freedom of commerce among the several States. It is legislation which 'can be most advantageously exercised by the States themselves.' *Gibbons vs. Ogden*, 9 Wheat. 1,203."

In *Schollenberger vs. Pennsylvania, supra*, the *Plumley* case was expressly affirmed. The Court in holding the Pennsylvania statute of 1885 to be invalid, when invoked as prohibiting the sale, in any form, of an article of commerce like oleomargarine, also expressly affirmed the decision of the *Powell* case (127 U. S. 678) where the identical statute was held to be valid *as applied to sales of oleomargarine manufactured and always remaining in Pennsylvania.*

At page 14, the Court say:

"In the execution of its police powers we admit the right of the State to enact such legislation as it may deem proper, even in regard to articles of interstate commerce, for the purpose of preventing fraud or deception in the sale of any commodity and to the extent that it may be fairly necessary to prevent the introduction or sale of an adulterated article within the limits of the State. But in carrying out its purposes the State cannot absolutely prohibit the introduction within the State of an article of commerce like pure oleomargarine."

At page 17 the Court, referring to the *Plumley* case, further say:

> "Attention was called in the opinion to the fact that the statute did not prohibit the manufacture or sale of all oleomargarine, but only such as was colored in imitation of yellow butter produced from unadulterated milk or cream of such milk. If free from coloration or ingredient that cause it to look like butter, the right to sell it in a separate and distinct form and in such manner as would advise the consumer of the real character was neither restricted nor prohibited. The court held that under the statute the party was only forbidden to practice in such matters a fraud upon the general public; that the statute seeks to suppress false pretences and to promote fair dealing in the sale of an article of food, and that it compels the sale of oleomargarine for what it really is by preventing its sale for what it is not; that the term 'commerce among the states,' did not mean a recognition of a right to practice a fraud upon the public in the sale of an article even if it had become the subject of trade in different parts of the country. It was said that the Constitution of the United States did not take from the states the power of preventing deception and fraud in the sale within their respective limits of articles, in whatever state manufactured, and that that instrument did not secure to any one the privilege of committing a wrong against society."

It is submitted therefore, the decisions in the *Plumley* and *Schollenberger* cases are in entire harmony, and that they support the contention of appellant that the clause of the enactment of the legislature of Minnesota which alone has been invoked in this case or any other case as prohibiting

the sale in Minnesota, in original packages, of oleomargarine imported by the vendor from other states, is a valid and reasonable exercise of the police power of the state. The defendant having been duly convicted of a violation of this clause of the Minnesota act, his discharge by the learned trial court on *habeas corpus* was error.

As heretofore contended, other portions of the Minnesota act, not referring to like compounds colored so as to deceive, which in a general way prohibit sales thereof in Minnesota, are not before the court at this time for adjudication. Some of these provisions have not and probably never will be construed or invoked by the authorities of Minnesota to prohibit the importation and sale in original packages of this product. As was said in *Packet Company vs. Keokuk*, 95 U. S. 89:

> "We think a severance is possible in this case. It may be stated the ordinance is too broad and that some of its provisions are unwarranted. When those provisions are attempted to be enforced, a different question may be presented."
>
> "That a part of a law may be constitutionally invalid and the remainder of it valid, where the objectionable part may be properly separated from the other, and this is so although the valid and the invalid may be contained in the same section."
>
> *State vs. Bockstruck*, 136 Mo. 336.

The learned trial judge of the 8th Judicial Circuit, District of Minnesota in his written opinion (Record, fol. 81) declared that "*Plumley vs. Massa-*

chusetts, 155 U. S. 461, was in all essentials like the present case." His decision in discharging the defendant (Record, fols. 84 to 86) was placed upon the distinct ground that *Plumley vs. Massachusetts* was overruled in effect in the *Schollenberger* case; and upon the second ground that the Act of Congress of August 2nd, 1886, providing for the taxation, etc., of oleomargarine, in defining this compound included as one of the ingredients, annatto and other coloring matter and therefore the sale of oleomargarine could not be prohibited. In defining his position, the learned judge (Record, fol. 85) says:

> "The doctrine which has apparent support in the *Plumley* case, that a state may exclude from its markets and absolutely prohibit the sale of an admittedly wholesome article of food, merely because it is designedly prepared to resemble so closely another generally desired article for which it is a substitute, that persons may be easily deceived and have it imposed upon them for the other article, is plainly contrary to the holding in the *Schollenberger* case and untenable since that decision in which the court announced that 'the legislative policy does not extend so far as to embrace the right to absolutely prohibit the introduction within the limits of the state of an article like oleomargarine properly and honestly manufactured.'"

The court overlooked the distinction pointed out by this court in the *Schollenberger* case, immediately following the above quotation, that the term "honestly manufactured" is not used in the sense understood by him.

Again the learned trial judge overlooked the fact that the Act of Congress referred to, of August 2, 1886, was by this court in *Plumley vs. Massachusetts* construed as not granting to those who pay taxes prescribed by it, the right to engage in the manufacture or sale of oleomargarine in any State which lawfully forbids such manufacture or sale, or to disregard any regulations which a state may *lawfully prescribe in reference to that article,* and that that act was not intended to be and is not a regulation of commerce among the states. This court at page 465 say:

> "The learned counsel for the appellant states that Congress in the act of August 2, 1886, has legislated fully on the subject of oleomargarine. This may be true so far as the purposes of that act are concerned. But there is no ground to suppose that Congress intended in that enactment to interfere with the exercise by the State of any authority they could rightfully exercise over the sale within their respective limits of the article defined as oleomargarine. The statute imposed certain special taxes upon manufactures of oleomargarine, as well as upon wholesale and retail dealers in that compound. And it is expressly declared (sec. 3) that sections 3232 to 3241 inclusive and section 3243 of the Revised Statutes, Title Internal Revenue, 'are, so far as applicable, made to extend to and include and apply to the special taxes' so imposed, 'and to the persons upon whom they are imposed.' Section 3243 of the Revised Statutes is in these words: *'The payment of any tax imposed by the internal revenue laws for carrying on any trade or business shall not be held to exempt any person from any penalty or punishment provided by*

> *the laws of any State for carrying on the same within such State, or in any manner to authorize the commencement or continuance of such trade or business contrary to the laws of such State or in places prohibited by municipal law;* nor shall the payment of any such tax be held to prohibit any State from placing a duty or tax on the same trade or business, for State or other purposes.' It is manifest that this section was incorporated into the act of August 2, 1886, to make it clear that Congress had no purpose to restrict the power of the States over the subject of the manufacture and sale of oleomargarine within their respective limits. The taxes prescribed by that act were imposed for national purposes, and their imposition did not give authority to those who paid them to engage in the manufacture or sale of oleomargarine in any State which lawfully forbade such manufacture or sale, or to disregard any regulations which a State might lawfully prescribe in reference to that article. *License Tax Cases*, 5 Wall. 462; 474; *Pervear vs. Commonwealth*, 5 Wall. 475; *United States vs. Dewitt*, 9 Wall. 41. Nor was the act of Congress relating to oleomargarine intended as a regulation of commerce among the States. Its provisions do not have special application to the transfer of oleomargarine from one State of the Union to another."

Again the decision in the *Plumley* case in this particular was expressly affirmed in *Schollenberger vs. Pennsylvania, supra,* where the Court at page 18 say:

> "The act of Congress, above cited, was referred to by the counsel for the appellant in the *Plumley* case, as furnishing a full system of legislation upon the subject, and he claimed that it excluded any legislation on the same

subject by the State, but it was held that there was no ground to suppose that Congress intended by that enactment to interfere with the exercise by the State of any authority they could rightfully exercise over the sale within their respective limits of the article defined as oleomargarine, and, as section 3243 of the Revised Statutes was referred to in the act, it was held that the section was incorporated in the act for the purpose of making it clear that Congress did not intend to restrict the power of the State over the subject of the manufacture and sale of oleomargarine within their respective limits.

"The taxes prescribed by that act were held to have been imposed for national purposes, and their imposition did not give authority to those who paid them to engage in the manufacture or sale of oleomargarine within any State which lawfully forbade such manufacture or sale, or to disregard any regulations which a State might lawfully prescribe in reference to that article. It was also held that the act of Congress was not intended as a regulation of commerce among the States."

By the provision under consideration the legislature did not prohibit absolutely the sale of oleomargarine in Minnesota, but on the other hand, rightfully prohibited the sale of any such article not made from milk or cream if colored so as to resemble butter and thereby deceive.

The defendant is not prejudiced by the conditions of any other enactment which evidences the policy of the state affecting other questions incident to the manufacture of this article.

The sale in question of a ten pound package containing ten separate unmarked prints of oleomar-

garine so colored as to resemble the highest grade of butter made from pure milk or cream, was clearly calculated to prejudice and mislead the public.

It is therefore submitted the question presented is settled in this court; that the act of the legislature of Minnesota does not violate any provision of the Federal Constitution and that the judgment of the Court appealed from should be reversed.

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Attorney for Appellant.